

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 5 - 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
Amendment of Part 95 of the)
Commission's Rules to Modify)
Construction Requirements for)
Interactive Video and Data)
Service (IVDS) Licenses)
)
)

WT Docket No. 95-131

To: The Commission

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REPLY COMMENTS

The Coalition of IVDS Licensees ("Coalition"),¹ by counsel and pursuant to Notice of Proposed Rulemaking, WT Docket No. 95-131, released August 14, 1995 ("Notice"), hereby submits these Reply Comments regarding the Commission's proposal to amend Section 95.833(a) of the Commission's Rules to eliminate the one-year construction benchmark for Interactive Video and Data Service ("IVDS") licensees.

Discussion

In its Comments, filed September 20, 1995, the Coalition supported the proposed rule change for two primary reasons. First, the legal predicate underlying the benchmark -- deterrence of speculation -- is no longer relevant now that licenses are awarded by auction. Second, given the present widespread unavailability of equipment choices, licensees and the public would be better served by being able to deploy quality interactive services without having

¹ A list of the Coalition members is attached to the Coalition's Comments.

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to waste resources on "license saver" equipment to meet the one-year benchmark. Significantly, the Coalition urged the Commission to adopt the rule change as expeditiously as possible to avoid limiting the licensees' options as the one-year construction benchmark approaches. The Coalition also stated that the existing three- and five-year benchmarks should be preserved in order to maintain the integrity of the FCC's rules.

All of the substantive² Comments filed in this proceeding favored the proposed elimination of Section 95.833(a).³ In so doing, one commenter noted -- as did the Coalition -- that the use of auctions to award licenses "effectively reduced the incentive for speculation." RLV Comments at p.2. Another commenter agreed that "IVDS licensees likely will order only equipment when they must do so, fearing that an early order will cost too much, preclude the consideration of other types of equipment, and provide less advanced equipment than might be available later." ITV Comments at p.5. A third commenter stated that by amending the rules as proposed, "the Commission will have provided IVDS licensees with the needed opportunity for flexibility in establishing their IVDS services." Aguayo Comments at p.2. In short, the views expressed

² The Comments of Radio Telecom & Technology, Inc. ("RTT Comments") did not advocate a position.

³ See, e.g., Comments of ITV, Inc. and IVDS Affiliates, LLC ("ITV Comments") at p. 5; Comments of EON Corporation ("Eon Comments") at p. 2; Comments of Erwin Aguayo, Jr. at pp. 1-2 ("Aguayo Comments"); and Comments of the Richard L. Vega Group ("RLV Comments") at pp. 2-3.

by the Coalition and shared by other commenters -- the substitution of auctions for lotteries, the negative impact of a construction deadline that would only serve to save the license rather than reflect sound business planning and flexible use of the IVDS spectrum -- overwhelmingly suggest adoption and implementation of the Commission's initiative.

Commenters disagreed, however, on two points not critical to the Commission's decision. First, not surprisingly, equipment manufacturers differ from licensees concerning equipment availability. Both Eon and RTT suggest that IVDS equipment is available, with RTT stating that it has "orders or letters of intent to provide equipment to more than 125 licensees." RTT Comments at p.1. (Notably, RTT fails to state whether it actually has installed equipment, whether the equipment functions properly or the delivery time on its equipment.) Eon claims that its equipment "will be available commercially well before the one-year buildout deadline." Eon Comments at p.2. As is apparent from these passages, and the absence of comments from other manufacturers, the current availability of equipment is questionable. Regardless, the lack of equipment should not be the basis for the Commission's proposed rule change, as the policy reasons set forth in the Coalition's Comments are sufficient to justify the elimination of the first-year construction benchmark.

Second, RLV advocates in its Comments the elimination of the third-year benchmark as "an outdated, unnecessary, and unduly burdensome requirement for . . . sincere license holders searching

for an effective utilization of the frequency." RLV Comments at p.2. ITV, on the other hand, asks the Commission to announce stringent policies on enforcement of the third-year and fifth-year construction benchmarks and installment payment deadlines.⁴ See ITV Comments at pp. 5-7. The Coalition believes that both of these proposals are beyond the scope of this proceeding. For the Commission to eliminate the third-year benchmark likely would violate the notice-and-comment provisions of the Administrative Procedure Act, and would, at this time, serve no useful purpose. Likewise, while the Coalition has no problem with the strict standards urged by ITV, the Coalition believes that existing rules and policies strike the appropriate balance between the legitimate rights of licensees and the integrity of the Commission's Rules.

As is readily apparent, the first-year construction benchmark should be eliminated. Given that no commenter has opposed the Commission's proposed rule change, there is no practical reason why the Commission should not act expeditiously to adopt the elimination of Section 95.833(a), as advocated by the Coalition in its Comments. Simply put, this is the rare case where an entire industry has spoken with one voice in supporting a Commission proposal. The message is clear: do it, and do it now.

⁴ On September 22, 1995, the Commission stayed the installment payment deadlines until thirty (30) days following action on a pending request for deferral. See Order, DA 95-2029, released September 22, 1995.

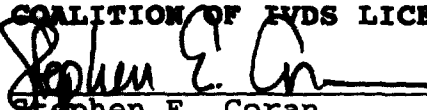
Conclusion

In view of the foregoing, the Commission should immediately amend Section 95.833(a) to eliminate the first-year construction benchmark.

Respectfully submitted,

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Date: October 5, 1995

CERTIFICATE OF SERVICE

I, Victor Onyeoziri, with the law firm of Rini, Coran & Lancellotta, P.C., do hereby certify that the foregoing "Reply Comments" was served on the below listed parties by First Class U.S. Mail this 5th day of October, 1995:

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